

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE *et al.*,

Plaintiffs,

v.

ANDREW WHEELER *et al.*,

Defendants.

CASE NO. C20-0950-JCC

ORDER

This matter comes before the Court on the proposed Intervenor-Defendants’ unopposed motion to intervene as Defendants in this action (Dkt. No. 8). Having thoroughly considered the motion and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion for the reasons explained herein.

**I. BACKGROUND**

Plaintiffs are nonprofit organizations dedicated to protecting natural resources and public health. (*See* Dkt. No. 1 at 3–5.) Plaintiffs ask the Court to vacate and set aside “Definition of Waters of the U.S.: Recodification of Pre-Existing Rules,” 84 Fed. Reg. 56,626 (October 22, 2019) (the “Repeal Rule”), and “The Navigable Waters Protection Rule: Definition of Waters of the United States,” 85 Fed. Reg. 22,250 (April 21, 2020) (the “Navigable Waters Rule”), two final rules promulgated by Defendants United States Environmental Protection Agency and United States Army Corps of Engineers (collectively, the “Agencies”). (*See id.* at 2–3.) Plaintiffs

1 further ask the Court to reinstate the “2015 ‘Clean Water Rule’ which defined the term ‘waters of  
2 the United States’ in the Clean Water Act.” (*Id.* at 2–3.)

3 The proposed Intervenor-Defendants the American Forest & Paper Association;  
4 American Petroleum Institute; Edison Electric Institute; National Stone, Sand, and Gravel  
5 Association; and the National Mining Association now move for permission to intervene in this  
6 action pursuant to Federal Rule of Civil Procedure 24. (*See generally* Dkt. No. 8.) The Agencies  
7 “take no position” on the motion and “Plaintiffs take no position provided that proposed  
8 intervenors comply with all briefing schedules and refrain from raising new issues or duplicative  
9 briefing.” (*Id.* at 2.)

## 10 **II. DISCUSSION**

### 11 **A. Legal Standard**

12 Federal Rule of Civil Procedure 24 “traditionally receives liberal construction in favor of  
13 applicants for intervention,” *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003), and  
14 provides two methods for intervention: intervention as a matter of right and permissive  
15 intervention. Absent a statutory right to intervene, a party seeking to intervene as a matter of  
16 right must: (1) timely move to intervene; (2) have a significantly protectable interest relating to  
17 the property or transaction that is the subject of the action; (3) be situated such that the  
18 disposition of the action may impair or impede the party’s ability to protect that interest; and (4)  
19 not be adequately represented by existing parties. *See* Fed. R. Civ. P. 24(a)(2); *Arakaki*, 324 F.3d  
20 at 1083. Alternatively, a court may, in its discretion, grant permissive intervention where the  
21 applicant “has a claim or defense that shares with the main action a common question of law or  
22 fact” and where intervention would not “unduly delay or prejudice the adjudication of the  
23 original parties’ rights.” Fed. R. Civ. P. 24(b)(1)(B), (b)(3); *see Spangler v. Pasadena City Bd. of*  
24 *Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977) (setting forth factors a court may consider when  
25 evaluating whether permissive intervention is appropriate).

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**B. Motion to Intervene**

The proposed Intervenor-Defendants' request to intervene is timely. The parties have yet to engage in discovery or substantive motions practice, which minimizes the possibility of prejudice to any party, and there is no indication that the proposed Intervenor-Defendants improperly delayed their request to intervene. *See United States ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992); (Dkt. No. 8 at 9). And the proposed Intervenor-Defendants have a significant, legally protected interest that is implicated by Plaintiffs' challenges to the Repeal Rule and the Navigable Waters Rule because the proposed Intervenor-Defendants are regulated by the Clean Water Act. *See Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006); *Sierra Club v. EPA*, 995 F.2d 1478, 1483 (9th Cir. 1993); (Dkt. No. 8 at 9–11). Furthermore, the proposed Intervenor-Defendants' ability to protect that interest may be impaired or impeded by the disposition of this action. (*See* Dkt. No. 8 at 11–12.) Finally, the proposed Intervenor-Defendants' interests may not be adequately represented by the existing parties, as the Agencies represent the public's interest in managing natural and economic resources and the proposed Intervenor-Defendants seek to use those resources. *See Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1498–99 (9th Cir. 1995); *Lockyer*, 450 F.3d at 444; (Dkt. No. 8 at 12–13). Therefore, the Court finds that that the proposed Intervenor-Defendants may intervene in this case as a matter of right. *See* Fed. R. Civ. P. 24(a)(2); *Arakaki*, 324 F.3d at 1083.

**III. CONCLUSION**

For the foregoing reasons, Intervenor-Defendants' motion to intervene (Dkt. No. 8) is GRANTED. Intervenor-Defendants must file their answer within seven days of the date this order is issued and must comply with all other case management dates.

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1 DATED this 28th day of August 2020.

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5 John C. Coughenour  
6 UNITED STATES DISTRICT JUDGE  
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